IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 239

ESTATE OF ARLESTER L. BURNELL, Ward,
Appellant,

vs.

STATE OF COLORADO,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF COLORADO

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully moves for rehearing on the per curiam opinion of this Court dated October 14, 1968, granting the Motion to Dismiss for want of a substantial federal question.

GROUNDS

1. The selective collection by the state of Petitioner's maintenance expense is clearly an invidious discrimination and constitutes a prima facie showing of a substantial federal question.

The traditional test under the Equal Protection Clause has been whether a state has made an invidious discrimination as when it selects a particular group, race, or class for oppressive treatment. *Baker* v. *Carr,* 369 U.S. 186, 7 L.Ed. 2d 663, 82 S.Ct. 691. See also *Skinner* v. *Oklahoma,* 316 U.S. 535, 86 L.Ed. 1655, 62 S.Ct. 1110.

2. A substantial amount in property rights is involved.

At the time of hearing before the Probate Court, the amount of the claim by the State of Colorado for Petitioner's maintenance was $7,704.49. The amount of this claim has continued to accumulate and is now in excess of $17,000.00. In the Motion of the State of Colorado filed before the Supreme Court of Colorado to advance the case on the docket because of the importance of the case, the Attorney General averred on page 2, paragraph 5,

> "That the judgment to which the Writ of Error is directed is therefore creating serious financial and administrative difficulty for Colorado State Hospital which heretofore has been collecting approximately One Hundred Thousand ($100,000.00) Dollars per year for the care and maintenance of the criminally insane and Three Million ($3,000.000.00) Dollars per year for the care and maintenance of the civilly adjudicated mentally ill, said funds being used to defray a portion of the cost of the operation of the Colorado State Hospital. There is no dispute that the problem is of a substantial financial proportions within the State of Colorado. [Transcript of Record]."

As pointed out in Petitioner's Brief Opposing Motion to Dismiss Appeal, many of the 42 states having legislation permitting the collection from estates of incompetent persons for maintenance do have statutory powers to so collect from the estates of those committed as criminally insane. Accordingly, the total amount collected by the states could easily amount to a figure in the millions of dollars and is thus of very substantial concern to those criminally committed and to the many states involved.

This Court has often granted review of a state Court holding bringing into question constitutionality of a statute similar to those in force in many of the states, *People of State of New York* v. *O'Neill,* 359 U.S. 1, 3 L.Ed. 2d 585, 79 S.Ct. 564.

The record abundantly demonstrates that the right to acquire, enjoy, and dispose of property is protected from discriminatory state action by the Fourteenth Amendment.

> "It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property. Equality in the enjoyment of property rights was regarded by the framers of the Amendment as an essential pre-condition to the realization of other basic civil rights and liberty which the Amendment was intended to guarantee."

Shelley v. *Kraemer,* 334 U.S. 1, 92 L.Ed. 845, 68 S.Ct. 836.

3. The question presented by this appeal will continue to be a source of controversy and is of such substance that it warrants a review by this court.

The continued assessment under various state laws of hundreds and possibly thousands of persons committed as criminally insane to state institutions will continue to be a

source of wide-spread controversy and litigation. This Court has consistently granted review where the issue presented raises a question which is likely to be a continuing source of controversy and litigation in both the state and federal Courts. *Gideon* v. *Wainwright*, 372 U.S. 335, 9 L.Ed. 2d 799, 83 S.Ct. 792. See also *U. S.* v. *Oregon*, 366 U.S. 643, 6 L.Ed. 2d 575, 81 S.Ct. 1278.

CONCLUSION

In view of the clear showing of an invidious discrimination in violation of Petitioner's rights to equal protection under the Fourteenth Amendment, and in view of the showing that substantial property rights are involved which can be the source of continuing controversy, Petitioner respectfully moves for rehearing.

CERTIFICATE

Counsel for the Petitioner hereby certify that this Petition is presented in good faith and not for the purpose of delay.

Respectfully submitted,

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